

LAKE COUNTY BOARD of ADJUSTMENT
November 9, 2016
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Sue Lavery, Steve Rosso, Don Patterson, Frank Mutch, Merle Parise

STAFF PRESENT: Jacob Feistner, Rob Edington, Lita Fonda, Joel Nelson, Wally Congdon

Sue Lavery called the meeting to order at 4:03 pm

TROYER DENSITY VARIANCE (4:03 pm)

Joel Nelson presented the staff report. (See attachments to minutes in the Nov. 2016 meeting file for staff report.) One additional public comment letter in support of the variance was received, which had been distributed to the Board.

Sue checked that if the hydrant in the shop was outside the door, the shop wouldn't be considered a unit. Joe agreed. Sue checked that the shop was a unit because this was inside, even though it was a hydrant and didn't have to have sanitation attached? Joel said that was his understanding. His understanding was the use of the water [influenced whether sanitation approval was needed]. In the breakroom, they were washing hands and dishes, which was greywater and wasn't supposed to be just drained onto the ground.

Steve confirmed with Joel that the small building south of the community center was the stable building. Joel pointed also to photograph #12 on pg. 23. Steve asked about setbacks in the Density regulations since it seemed close to the property line. Joel replied that setbacks were at the discretion of the landowner. On a preliminary plat for subdivision, they would have to show the existing buildings relative to the property lines. A building would have to be on [one] lot. They'd also look at elements of stormwater, which should be contained on the lot. If it was not, staff would likely recommend an easement to be granted for the stormwater conveyance. Steve wanted to check whether this was a [BOA] issue or if it would be covered during subdivision review. They could also move the property line if it was an issue.

Steve checked about the cemetery, which wasn't shown. He asked if there was room for a sanitation system. Joel said that would be covered with the subdivision reviews for both Planning and Sanitation. He thought the current drainfield was from 1999.

Frank asked why the parcels were being separated. Joel referred to Orlie's letter. Orlie would like to move the responsibility for the church and school property to the church board and committee.

Orlie Troyer spoke on behalf of his application. It had been very well covered. He welcomed the opportunity to get things in compliance. The reason for the division was

simply [he and his wife] moved to Stevensville. This would be a secondary property because of the business on it. They owned it. One of his sons leased the property from them and continued with the business. The subdivision would shift the responsibility [for the property with the school and church] from him to the church board and committee. Then he wouldn't need to be involved in those decisions. As far as changes in the foreseeable future, there would be no physical changes or changes in use.

Public comment opened: None offered. *Public comment closed.*

Steve referred to the map on pg. 2. Small lots were scattered around in the 20-acre density area. He didn't know if it was better to have a 25- and a 5-acre lot or two 15's as far as precedent. He didn't see an issue with it.

Sue asked why a 3.96-acre lot had been chosen. Orlie replied this was where the fence was located. In response to Steve's question, Orlie described the distance from the back of the stable to the fence as just under the width of the buggy, so the eave was on the property.

Motion made by Sue Laverty, and seconded by Don Patterson, to approve the variance with findings of fact, staff report, conditions and terms. Motion carried, all in favor.

Regarding Frank's offer of his standard objection to the Density Map & Regulations, Sue clarified that this was not needed at this time. This was on the record, was known by the Board and if he wanted to continue to make statements, perhaps in the future he should recuse himself so he could make a statement as a member of the public.

SIMONSON CONDITIONAL USES—UPPER WEST SHORE (approx. 4:30 pm)

Joel Nelson noted that Rick Breckenridge, agent for Simonson Holdings, was here and presented the staff report. (See attachments to minutes in the Nov. 2016 meeting file for staff report.)

Sue asked when the RV park restaurant had been established. Wally gave some history, including improvements made by MDT. He thought the RV park restaurant had been established around 1955. This currently was a legal non-conforming use. If 50% or more of the building burned down or was destroyed, it couldn't be replaced. M & S Meats had the same problem. He suggested that by making it conform through a conditional use, the situation was better. It gave an incentive to clean things up and an economic incentive to keep it nice. Someone volunteered that it might be as much as 80 years old.

Steve asked about the gift shop. Rick said it was in the office. Minor things were sold there, such as T-shirts and tackle supplies. Steve checked that RV park attendees checked into the office. Rick said it was foot traffic. Steve confirmed with Joel the cabin building was also a short-term vacation rental.

Steve, Joel and Wally discussed living units and dwelling units. Steve asked if making the living units part of commercial use, such as with a motel, meant that you didn't have to count them toward the living unit limit. Joel gave a definition of a dwelling unit as any structure, building or portion thereof, within a larger structure that was intended or designed for human occupancy and/or use and is supplied with water by a piped system. Steve pointed to the zoning regulations and single-family residential. Joel said this was a commercial use for Highway-Commercial. Steve referred to a motel—they wouldn't have to consider the number of living units? Joel didn't think that was right. The density would still apply. If they were proposing this as a new development, they would have an issue with density. They were only allowed 1 dwelling unit per 5 acres. The request didn't change the number of dwelling units since they were existing.

Steve asked if it was okay that Highway-Commercial was a bunch of living units. Joel said if it was new, they'd have trouble meeting the density limitations. Steve said if the BOA granted this, they'd be ignoring the density requirement. Joel said there was no new density proposed at this time. Frank said it was an existing use. Wally said that when it became a conditional use, it was no longer a non-conforming use. If Commercial didn't have a density limitation, a conditional use permit for Highway Commercial did not have a density limit apply. Joel said all land development shall not exceed 1 unit per 5 acres. Wally said this was for new ongoing, not prior existing. Steve said prior existing was limited to a nonconforming use. Wally said if you made it a conditional use, it conformed with the use then. Steve summarized that even though it was nonconforming, they could make it conforming. Wally clarified that you weren't doing it new. You were acknowledging the condition that was there now. You had an added benefit: by acknowledging that condition now, you could put on conditions such as shielding the lighting. You got there by recognizing the condition that was there, and now you were going to change the condition a bit. You were modifying or mitigating the condition, which was what you could do this route that you couldn't do any other way. Steve asked if a motel could be granted under the conditional use permit in Highway Commercial. Joel thought they could.

Steve pointed to the cabin/utility building on the site plan that looked like it was right on or by the property line. It didn't meet the setback requirement in the zoning regulations. By making it a conditional use, they got to ignore the fact it didn't meet setback, which depended on the width with a 10-foot minimum. Wally said by acknowledging the conditional use, they had the ability to have the setback acknowledged if the building was replaced later. The use was there. The difference was that if you didn't have the conditional use and the building burnt down, it was gone and couldn't be rebuilt. If you made it a conditional use, they could rebuild but it had to have the setback. Now the use was acknowledged. Steve asked if that needed to be a condition. Wally replied that was up to the Board. If they wanted that as a condition, it was probably a fair thing to do. The present owner would have the use acknowledged. They would have to come closer to compliance over time, which was the purpose of zoning.

Steve asked if another guest house could be built if the current guest house was made into a vacation rental. Joel noted that a guesthouse from 200 to 1000 square feet would be a

permitted use. A guest house over that would go to the Board. Rick suggested conditioning this so that didn't happen. Someone pointed out there wouldn't be room for septic. Sue suggested putting that in condition #5.

Steve asked if the well shown on the site plan off the property was the water supply for this development. Rick Breckenridge said no. He referred to the pump house. They got water from the lake. They had to show DEQ what was within a 100 feet. Steve and Rick discussed the pump house and system. Rick noted this was a public water supply system where it was tested every month.

Merle referred to a safety item #12 on pg. 13. He asked if it was a highway engineer or an MDT worker who said site distances appeared to be adequate. Joel explained that was his opinion. Merle thought it would be important to get a written comment from MDT, recognizing that you'd have ingress and egress of big RV's. Going south, someone would be coming down off of a hill and have to make a right turn to go in. It would back up traffic without a right hand turn lane. The same thing would happen when going up the hill without a left turn lane. Steve said a left turn lane existed. The passing lane didn't start until after the RV park. Merle was concerned about those coming down the hill and suggested a MDT engineer review this. Joel noted MDT was notified and had the opportunity to provide comment. Rick mentioned MDT designed it when they put in the new road and relocated. The turn lane was there because the RV park was there. Steve thought that was done in 1989. The group supplied that the speed limit was 'reasonable and prudent' at that time. Merle still felt this was a concern.

Agent Rick Breckenridge described that the owner, who was dealing with a medical condition, was concerned about the use being vacated for a period of 18 months and being lost. This was one of the reasons they wanted to do this. Rick said they would agree with the two conditions he thought he'd heard suggested in discussion. One was that at such time a building was replaced, it met the zoning setbacks. The other was no guest house would be permitted. He supported those two conditions. [He and his client] agreed with the staff report. He mentioned the lighting. They would review the sign when they fixed it. The property had a huge file. Much had been done by variance. This gave an opportunity to clean it up. They had DEQ (Department of Environmental Quality) issues that they didn't know about until they got started on this review. They could now come to the table and say they had a compliant environmental package and here were the uses. Stormwater requirements from DEQ had been met. The site sanitation was approved. This was the only piece remaining to do.

Merle asked how many permanent RVers were there now. Rick said it was empty at present, with no permanent people staying there. In the three years with the current owner, no one had been interested in wintering there. Wally recalled that permanent RVers occurred during the time of construction on Hwy 93, such as widening, when 5 or 6 units stayed for months while working on the road construction. He had no recollection of other permanent RVers in it. Merle explained his concern about permanent RVers was you got extra larger propane tanks that sat out there and were not protected from traffic. Wally noted [the park] was also uphill, which was nice, rather than on the flats.

Public comment opened: None offered. Public comment closed.

Steve suggested wording one of the conditions to be added as ‘existing building replacement must meet regulations’ and the other that there was to be no new guest house. He didn’t know if those needed to be in the findings somewhere. Joel asked for the reason of the guesthouse prohibition. Steve said if they changed the current guesthouse to a short term vacation rental, there would be no guesthouse. The regulations allowed a guesthouse to be added. The intent wasn’t to allow them to keep adding guesthouses. Joel asked if the concern was it expanded the density and clarification was needed that no more dwelling or guesthouses were allowed. Steve affirmed. Joel suggested putting in the condition that it was based on the density limitations. Sue agreed it was better in the conditions. She didn’t know where you’d put it in the findings, which were general objectives of the zoning district. Steve was checking that the applicant got what he was after here, which was legitimizing the development.

For the condition, Joel suggested, ***“Based on the density limitation of the zoning and sub-district, no new guesthouses shall be permitted on the property.”*** Sue noted a new owner down the line could change the short-term rental back to a guesthouse.

Steve asked if the regulations talked about replacing destroyed structures. Frank pointed to the second paragraph of C on pg. 4. Steve thought they needed to say if a structure was destroyed, they could rebuild but they needed to meet the existing regulations. Sue thought it was being made conforming by the conditional use and [replacement of buildings affected by] destruction would need to conform with the regulations. Steve said this was only mentioned under existing non-conforming uses and it would be out of that if it became conforming through the conditional use. Joel didn’t think by approving a conditional use for commercial would make all non-conformities okay. If a structure didn’t conform to setbacks, it was non-conforming to the setbacks. The use would be conditional now but not its location. Wally said you made the location conditional now until it had to be replaced. The County had no jurisdiction to make the owner move it. They were acknowledging it was there. If it was moved or replaced, it had to conform. A condition could be if the building was moved or replaced, it needed to be re-placed in conformance with the regulations. Frank suggested putting in a condition that said the terms of item C. Existing Uses apply to this rather than repeating it. Sue suggested, ***“Any replacement structure must meet the terms of these zoning regulations” in condition #1 after the first sentence. Joel referred to the middle sentence in the second paragraph of C on pg. 4.***

Wally suggested from a lawyer perspective that there needed to be notice to the public so future buyers knew this was there. They should record the notice on the premises that said this premises had a conditional use permit. Steve asked if it should go on the plat. Wally said it should be recorded against the deed or on the legal description or whatever that the property is subject to the conditions of the conditional use permit. Everyone would be on notice. Steve said they’d need another condition. Wally said this would say

to *record a simple instrument that said ‘this premises is subject to a conditional use permit.’* He added, “*Copies are available from Lake County.*” Joel asked if that would happen prior to issuance of a permit. Steve said that was a condition of getting the conditional use. Wally said an alternative was to record the permit with the legal description on it.

Steve asked if Linda Robbins bought the property after the RV park [was built]. Jalmer Carlson thought so. Sue acknowledged for the record that both the February and current Robbins letter were in the staff packet for the Board.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with findings of fact and conditions and terms as modified. Motion carried, all in favor.

CARLSON CONDITIONAL USE—UPPER WEST SHORE (5:27 pm)

Joel Nelson presented the staff report. (See attachments to minutes in the Nov. 2016 meeting file for staff report.)

Jalmer Carlson, owner, said the guesthouse had been deactivated. The heat system, shower and so forth had been removed. It would remain a storage building. Buck Breckenridge, agent, asked about the detail needed for the site plan. Joel read from the italicized portion of #4 on pg. 8, which spoke to that. He noted they didn’t need a letter of review and comment from the fire department. Buck said he interpreted that section as meaning for new development so they didn’t include that for the existing. He checked that it was necessary to have a detailed, professional quality map prepared. Joel thought this was needed. He gave examples of square footage, impervious coverage and current setbacks. Sue commented it gave credence to what was in compliance and what was not. Steve and Joel touched on impervious surface and rebuilding.

Jalmer commented that the shed in photograph #4 was on a different property. Steve asked about the history and age of the property given Ken Robbins’ concern. Jalmer described some history. Regarding the age, they’d had M & S Meats/ the Locker Plant 20 years, and he thought Milt [Oberg] had it 26 years. It had probably been around 25 years before that. Steve thought it was very likely that this was there when the Robbins first bought their property.

Steve brought up the approach discussion. He asked if they wanted to put an easement in with the RV park and restaurant in case there was an issue about the width of the M&S Meats approach. Jalmer and Rick both replied one was there. Don observed that item #18 on pg. 13 talked about the approach. Steve confirmed with Jalmer and Rick that they were confident there was no issue for a new buyer.

Public comment opened: None offered. *Public comment closed.*

Steve suggested adding two conditions, like with the last item, about recording and about making sure that replacement due to destruction of an existing building would meet the

existing regulations. Wally said this was a much smaller lot. The topography was almost like a daylight basement with the way the slope came down behind it. He didn't think that moving the main structure was a viable option given the geography of the site. For the other structures, it was probably easy. Steve and Wally thought it might be good to exclude the main building and have the condition for the other little buildings. Jalmer said if something happened to those little buildings, they wouldn't be replaced, at least by him. Steve returned to the 2 conditions to add. Joel noted they'd be approving a variance by putting in the exemption [of the main building]. Jalmer said it conformed to the current setbacks. Steve said they would learn that when the site plan was done. Maybe that condition should just say if there was a setback issue, a replacement would need to meet the regulations or get a variance. Joel thought the same language as used in the Simonsen item could be used. Steve and Joel talked about setback calculations. Joel found his calculation of average lot width to be 89.66 feet. Jalmer concluded the setback was 10 feet. The closest corner of that building to the line was probably 18 feet away.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use with findings of fact and conditions as modified with the two additional conditions [about recording and about replacement]. Motion carried, all in favor.

The Board took a short break from 5:48 pm to 5:52 pm.

CARSTENSEN APPEAL—FINLEY POINT (5:52 pm)

Rob Edington introduced Deborah Carstensen, the applicant, and presented the staff report. (See attachments to minutes in the Nov. 2016 meeting file for staff report.) Two additional public comments were received since the staff report and had been handed out to the Board. The applicant had provided two additional letters to him this evening, which there had not been an opportunity to copy.

Rob clarified for Steve regarding 10.e on pg. 10 that his understanding was the owners had the right to request a variance. The Finley Point zoning strictly stated that variances could not be granted for a prohibited use. Based on that fact, staff would recommend denial for a variance.

Wally said this was a 'bottom-up' zone from a citizen-initiated petition where the neighborhood asked for zoning. The ordinance said you could ask for a variance or file an appeal in one paragraph. The same ordinance said you couldn't give a variance for a restricted use. He referred to 76-2-223 and read that paragraph on 'Powers of board of adjustment', highlighting 76-2-233.c. The question was if the [inaudible] hardship was such that it was worth having a run at the question whether the zoning ordinance itself could say you couldn't do a variance when the state law said if it was an unnecessary hardship and didn't violate the provisions of the rule, you should get a variance. The ordinance itself gave a process for a variance but you couldn't do a variance for this stuff. It was poorly written and not thought through. This one had never been seen. He described the landmark Supreme Court case on a similar question in Missoula County.

If the owners potentially wanted to change the zone for what they were trying to accomplish and if they could meet the spirit of the ordinance under parking, noise, etcetera, a petition through enough of the neighbors to adjust the zoning district [might be a path]. The petition would not be the change itself. It would be up to the County Commissioners.

Wally said either you had a run at the question if there's such a hardship that someone might sue over whether or not you could do it per what the state law said or was it better to say to bring a petition, neighbors and applicants to the Commissioners with enough of their signatures and have a run at changing the zone. If other people had similar questionable things, it solved those problems long term too. If that was the case, his suggestion was the Board of Adjustment (BOA) ought to hear a presentation from the applicant and have some reasons why. Then [the Board] would send it on to the County Commissioners with a note that said they suggested making an application from the neighbors to amend the zone and what [the Board] saw as conditions and leave it at that.

Wally suspected some neighbors would sue the BOA over the issue of the wedding venue if they were sending so many notes and letters with pictures of the cars and so forth. By the same token, the applicant bought the land with the zoning in place. The zone was there when they bought it so they didn't have the ability to say it was taken away. They bought it subject to this [zoning]. He wasn't looking so much at the applicant filing a lawsuit or appeal or trying to go after the BOA. He was looking at the perspective that the neighbors would probably do it if they hated this wedding venue and didn't want the noise and whatever else. Changing the ordinance might well be the best way to do it to broaden the ability of the Commissioners to do a variance. You could get rid of the portion that said you couldn't do a variance. He compared timeframes for a [zoning] change versus court.

Sue asked if this would be asking the Commissioners to create a variance. Wally said this was to amend the zoning. Sue inquired if the citizen base in that sub-district could go to the Commissioners to amend their zoning to allow for wedding venues or to clarify grey areas about what might be considered commercial. Wally thought that was a better way because it was the public asking for specific change rather than just asking to let them make a variance on a case-by-case basis. That would be saying this was an allowable use and acknowledging these were allowable things.

Steve said this was essentially recommending 10.c (pg. 10) to propose an amendment to the Finley Point Zoning District regulations. The regulations contained a section describing the process on how to make an amendment. They'd gone through this a short time ago with the Planning Board for the Upper West Shore Zoning District regarding a church camp situation. If they added wedding or event venues to the conditional uses, everyone could apply for that conditional use. Another person might not want to limit the number of weddings and have rules such as turning off the music by 10 pm. The rules might have to be put in the amendment. You really had to think this through in conjunction with the neighbors as to what kind of conditions they would accept for this kind of thing. It would come in front of the Planning Board, which would listen to public

comment. If a bunch of people came and said ‘we don’t want to amend it’, it might not be amended. It wasn’t a sure thing.

Sue suggested they could do both. They could clarify different conditional uses as well as amending the zoning district. Steve agreed. It would be amending the zoning district regulations by adding a conditional use. Sue added they could also clean up the verbiage that Wally spoke about regarding the conflict between the zoning district saying you couldn’t ask for a variance for a prohibited use and state law. If the amendment to have this as a conditional use failed, then the amendment to ask for a variance for a prohibited use might pass. Wally clarified the government was saying the public said they wanted this zoning. The presumption did not fall in favor of the people wanting the variance. In the Supreme or District Court, the presumption fell in the favor of the public, who asked for the district. If they took the route of saying they saw no compelling interest in banning a wedding venue, at the same time the presumption went to the local district that was citizen initiated. That was the dilemma.

Steve said if the applicants were to go with the idea of amending it rather than putting event venues in the conditional use, someone could ask for a variance to have a casino or a solid or hazardous waste site. There were two kinds of amendments. He thought that adding event venues to the conditional uses was the way to go. Another option was to amend the map with another sub-district for their property although he wouldn’t recommend that one. Wally recommended against spot zoning. The other problem would be new neighbors wanting to shut it down. They were better off by fixing the problem.

Jacob said if rezoning was a desired option, the regulations clearly laid out the process. It would go by state law 76-2-205 if that were the option. Tonight they were talking about an appeal. They needed to continue to put the focus on that.

Merle asked how many neighbors protested and if there were enough people to put in for amending and leave it up to the Commissioners. Rob said he received 16 [letters] prior: 13 were for and 3 were against. Two additional against had been received. Frank mentioned a bunch of local businesses supported this. His experience with this zoning was that it seemed like top-down zoning. All kind of things were going on at Finley Point that weren’t allowed in the zoning and went way beyond the limitations. He thought it was time to look at what was going on out there with a mandatory review. He cautioned it could be more restrictive after that was done.

Sue returned to the appeal that was in front of the Board. Wally said they had no jurisdiction under the ordinance to give a variance or an appeal. The ordinance said this was commercial and you couldn’t give a variance for prohibited uses. They could go with state law and say it was an undue hardship but then someone was likely to sue and shut it down, which didn’t do either the applicant or the County any good. The time would be better spent fixing the problem. Amending the ordinance would be faster than getting a ‘no’ while this was tied up in court.

Steve thought the applicants were getting the feeling the Board members agreed with Rob that this was a commercial use, which was a prohibited use. He asked the applicants to address if there was some conditional use that they thought this fell under.

Deborah Carstensen spoke of vacation rentals. People rented their properties for a week. They had weddings or family reunions or anniversary parties. What was the difference between the applicants renting their property for a wedding versus what other people were doing? Steve explained to fit under the permitted use described in IV.A.5 (on pg. 3 of the staff report) of state-licensed short term vacation rental, you have to rent the entire property. You couldn't be there. If the renter decided to hold a big wedding, it could be an issue where the neighbors complained to the planners, even if you decided to take the risk of turning your entire property over for the weekend. Sue thought when people rented an entire property for a family reunion, they usually organized it themselves rather than hiring outside help at a house they rented. Deborah said they did have a wedding that was too large that involved a wedding planner. You gave a wedding planner a list of things that could and couldn't be done, and the wedding planner supervised that.

Steve identified another problem if they did a state-licensed short term rental where she moved off the property. The marketing strategy couldn't be done as done currently. It would have to be marketed as a short-term rental without mentioning events. Another problem was that there were multiple uses at the property with the agriculture and the vineyard, which was an agricultural business. Could somebody have an agricultural use and a vacation rental use? He thought they should try to amend the zoning regulations. He thought Frank was hinting they should try to repeal the regulations, if that was what they wanted.

Frank referred to vacation rentals. He knew of three or more vacation rentals where a portion of the primary residence was rented on a vacation basis. Jacob pointed out another difference with the comparison being made was that vacation rentals were state-licensed (or supposed to be) and had conditions they had to meet. [The County] lacked the staff and time to monitor all of those. He clarified on an earlier comment that it was a conditional use on Finley Point to process fruit and wine but you couldn't sell it from your property. That was among the prohibited commercial uses. You could ship those. The Board and applicant further discussed the sale of fruit and fruit products.

Sue focused back on the appeal. Steve suggested the applicants could withdraw their appeal. Jacob pointed to items c, d and e for Board action in the staff report on pg. 11 that would still need to be covered.

Deborah commented on her application. She and her husband lived here full time, which was her dream. She gave some background and history, including that of weddings, parties and reunions. A wedding and two large two-day family reunions occurred on the property to the north. Two large weddings were hosted on the property to the south, one of which spilled onto their property, where the Carstensen's happily hosted pre-wedding cocktails and hors d'oeuvres. Since they purchased their property and prior to expanding it, they had two weddings and their 25th wedding anniversary. In September 2015, a

friend's daughter was supposed to get married on a boat that got docked due to weather so they hosted it on 24-hour notice. The guests and wedding party thought it was a special place that was perfect for weddings.

In March, she was approached about holding a wedding at their vineyard in July since a friend's home construction had been delayed. She was reluctant [to agree] because there was already a wedding happening there for a family friend the weekend after that but was swayed by the extravagance to agree. She proactively contacted each neighbor, most of whom were excited about the wedding and planned to listen to the band from their docks. They offered a night's lodging elsewhere to their northern neighbor because she didn't tolerate music or noise. On the day of the event, the weather was a factor and things were delayed an hour. The band played until almost midnight instead of ending at 11 pm, thus a lot of complaints happened. The next day she explained to everybody what happened. Everyone was super about it and said they really enjoyed the music. The neighbor she was most worried about said it was no problem but then called the County.

The opposition letters from adjacent property owners were taken under very respectful consideration by Deborah and her husband. They fully agreed on many points. The July wedding was too big, too loud and too over-the-top. They learned from those mistakes. They proposed a plan to mitigate parking and noise issues. They considered themselves to be reasonable, tolerant and friendly neighbors. They haven't always experienced reciprocal treatment from adjacent owners. Since the neighbor who galvanized the effort to stop them from hosting weddings sent in pictures, Deborah opted to share an email she received from that neighbor complaining about noise (see attachment to minutes in the Nov. 2016 meeting file for handout). She asked if this was the behavior of a reasonable and tolerant person. Other complaints over the years included overly bright dock lights, overly irritating irrigation pump, too frequent hot tub jets, too early or late tractor mowing, too obnoxious jet ski riding and obsessive vacuuming. She wanted fairness and to be allowed to use her property to gain income and invest in the community as long as it didn't infringe upon the neighbors. They were holding themselves to higher standards in their zero impact plan than most of the neighbors. They talked a lot tonight about how to proceed.

Deborah's interpretation was that if it was allowed as a permissible commercial activity under Finley Point zoning regulations, it was legal to use the property [for a wedding venue] if they went through the state as a vacation rental. She'd seen it done where people had a wedding or other celebration during their rental period. [This could happen] as long as the renters abided by the Finley Point zoning regulations regarding parking, noise, etcetera. They as owners didn't have that same right. If her son had an opportunity to keep the place when they were gone, he would most likely want to operate a design-build home office. She didn't want to see him lose that opportunity. She and her husband had worked and sacrificed to build and maintain their bucolic lakeside property, vineyard, orchard and gardens.

They'd seen a shift in the complexion of Finley Point and of Flathead waterfront in general. Lake cottages that had been in families for generations were disappearing to

make way for McMansions and the ultra-wealthy out-of-state people who only visited in the summer. They were losing open space and the sense of community. She asked that they consider the letters of support. She researched the economic impact of destination weddings and what this could bring to a community and also their zero impact plan. They respected their neighbors and providing that a majority of neighbors already used their properties as vacation rentals, she saw that as a commercial activity. She thought it was only fair given their zero impact plan and that they didn't infringe upon their neighbors. They had made mistakes but would like to continue to do it right.

Public comment opened:

Will Thrasher, a neighbor, supported the proposal and thought she'd presented it well.

Jill Roberts was here for moral support. She believed in what Deborah was doing and that there was a process. If they could get some guidance, they needed that to help Deborah follow her dream.

Cindy Noland was not an adjacent neighbor but a general neighbor. She supported what they were doing. She'd received a letter of support from an 81-year old aunt who was 4th generation. They had a long history there, since 1949. This was where her family came to be together. It came with a high price. For year-round people, it was hard to make a living here. They had to think creatively and out of the box on how to do that and stay there. The idea of a community was to stay and keep their children here. More often than not, people were choosing to go elsewhere because there wasn't enough here to sustain them. Her point was they needed ingenuity and things like this to happen so they could bring revenue in and continue to grow.

Linda Thrasher said [Cindy], her daughter, described how they evolved here. She wrote a letter as well in support of Deborah. Things changed and if you didn't, you'd be gobbled up. That would happen on Finley Point. The long term residents would be gobbled up by powers from outside Montana. They had to decide how they would stay.

Public comment closed.

Steve thought that the son's architectural business qualified easily as a home occupation as long as it was small without a bunch of employees to park and so forth. They probably wouldn't have a problem getting a conditional use permit because it was one of the things in the list. [The applicants] probably had already gotten the idea about trying to amend these zoning regulations. It was a process to go through and it took time. They needed to be thoughtful about what they wanted to add [to the zoning regulations]. The thought that there might be some other business or revenue-generating opportunities that they'd like to do had been mentioned. When doing an amendment, think that through and put those items in the amendment. However, the bigger the amendment was, the harder it might be to get the neighbors to agree. That would be a big issue here. They would need to appeal to the neighbors and sell this idea. If the neighbors went to the Planning Board and showed the majority of the people in and adjacent to the zoning district were for it

then they would have a good chance of amending it. Deborah said they had pretty much already done that. They wanted comments from their neighbors.

Frank thought it was sad that they couldn't accommodate this but they were bound to hold up the law. It was clear that it was commercial. He thought they had to affirm the decision. They didn't have a basis to reverse it. He would not order the removal of the improvements but suggested they get a zoning conformance permit. He would not impose a penalty. They'd spend a lot of money and heartache already. They had to focus on the issue in front of the board. He thought they needed to look at the zoning regulations but thought those were likely to get more restrictive.

Sue agreed with Frank. She mentioned to Deborah that she did an excellent job of keeping her emotions out of this in her presentation. She knew it was hard. Things changed. By amending the zoning district, things could get better or they could get worse. It was definitely a commercial use. She wasn't interested in imposing a penalty. The improvements needed to have a zoning conformance permit; those items had to be taken care of.

Steve agreed with most of that. He pointed to 1.c on pg. 11 of the staff report. The owners would need to decide what they wanted to do with the [unpermitted] improvements. They could remove them or apply for an after-the-fact permit, which included additional charges. He didn't think there should be an additional penalty. The after-the-fact part was enough. He checked with Jacob, who confirmed this was typically the process. Recently Deborah got a zoning conformance permit to replace her garage with a barn. Because they'd already conducted a [recent] site visit, they would help her out on the after-the-fact fees since they'd been out there.

Steve said the owners would have to find out what those fees would be and what they needed to do, and weigh their options. Deborah checked that he was talking about the greenhouse. Rob said it would be the improvements. Jacob said they wanted to make sure the things on there were covered with a permit so they didn't have problems moving forward.

Steve referred to 1.e on pg. 11. They needed to get their permit beforehand before they built another greenhouse, garage or whatever, in order to not pay after-the-fact penalties.

Sue asked about the impervious surface and the driveway area. Rob said a zoning conformance permit would be necessary as it appeared to be over 100 square feet. They would look at setbacks to the high water mark of Flathead Lake. Deborah described their greenhouse kit. They asked the person who did the cement work if they needed a permit. He hadn't thought so.

Motion made by Steve Rosso to affirm the staff decision based on findings of fact in the staff report and for the improvements that are done, to order the removal or [fulfill] the requirement to get a zoning conformance permit with no additional penalty required by the Board. Jacob mentioned there were no findings of fact, just

pertinent points for discussion and analysis. **Steve Rosso revised his motion to adopt the pertinent information as findings of fact. Seconded by Sue Lavery. Motion carried, all in favor.**

MINUTES

Deferred.

OTHER BUSINESS

None.

Sue Lavery, chair, adjourned the meeting at 7:07 pm.